

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHIRLEY A. HEGEL and U.S. POSTAL SERVICE,  
POST OFFICE, Billings, MT

*Docket No. 99-2198; Submitted on the Record;  
Issued October 23, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than an 11 percent impairment of the left arm for which she received a schedule award.

On June 6, 1996 appellant, then a 42-year-old clerk, filed an occupational disease claim alleging that she sustained injuries to her left shoulder and lower back causally related to factors of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for left shoulder tendinitis and lumbar strain and authorized a left shoulder arthrogram.

On April 10, 1998 appellant filed a claim for a schedule award. By decision dated August 13, 1998, the Office issued appellant a schedule award for an 11 percent permanent impairment of her left arm. The period of the award ran for 34.32 weeks beginning April 9, 1998.

On October 19, 1998 appellant requested reconsideration, which the Office denied in a nonmerit decision dated November 24, 1998. Appellant again requested reconsideration on February 4, 1999. By decision dated May 6, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of her schedule award.

The Board finds that appellant has no more than an 11 percent impairment of the left arm for which she received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act,<sup>1</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment

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<sup>1</sup> 5 U.S.C. § 8107.

shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>2</sup>

In a report dated April 9, 1998, Dr. James F. Schwarten, a Board-certified orthopedic surgeon and appellant's attending physician, found that she had reached maximum medical improvement. He noted that appellant had "discomfort in her shoulder with certain activities" and stated:

"There is still crepitation present, mild to moderate. This was painful at extremes of elevation. Internal rotation is 60 degrees, external rotation is 70 degrees. Abduction and forward extension are normal.

"The loss of motion of internal rotation is a 2 percent impairment. The crepitation between mild to moderate is 15 percent, totally 17 percent of the upper extremity, and this extrapolates to 10 percent of the whole person as a permanent impairment."<sup>3</sup>

Dr. Schwarten indicated that he had used the A.M.A., *Guides* (4<sup>th</sup> ed. 1993) in reaching his impairment determination.

In reports dated October 7, 1998 and January 21, 1999, Dr. Schwarten described his application of the A.M.A., *Guides* in reaching his conclusion that appellant had a 17 percent permanent impairment of the left upper extremity.

On August 3, 1998 an Office medical adviser reviewed Dr. Schwarten's April 9, 1998 report and applied the appropriate tables and pages of the A.M.A., *Guides* to his findings. The Office medical adviser concurred with Dr. Schwarten's finding of a two percent impairment due to loss of range of motion<sup>4</sup> and a 15 percent mild to moderate impairment due to crepitation.<sup>5</sup> As instructed by the A.M.A., *Guides*,<sup>6</sup> the Office medical adviser multiplied the 15 percent impairment due to crepitation by 60 percent, the maximum impairment value for the glenohumeral joint of the shoulder, to find that appellant had a total impairment due to joint crepitation of 9 percent.<sup>7</sup> The Office medical adviser then combined the 2 percent impairment

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<sup>2</sup> *James J. Hjort*, 45 ECAB 595 (1994).

<sup>3</sup> The Act does not provide a schedule award for whole person impairments. 5 U.S.C. § 8107(c).

<sup>4</sup> A.M.A., *Guides* at 45, Figure 44.

<sup>5</sup> *Id.* at 59, Table 19.

<sup>6</sup> *Id.* at 58.

<sup>7</sup> *Id.* at 58, Table 18.

due to loss of range of motion with the 9 percent impairment due to creipitation using the Combined Values Chart, and concluded that appellant had an 11 percent impairment of the left arm.<sup>8</sup>

The Office medical adviser properly applied the A.M.A., *Guides* to Dr. Schwarten's findings. The Office medical adviser further reviewed Dr. Schwarten's subsequent reports and noted that Dr. Schwarten had merely repeated his previous calculations which were not completely in accordance with the A.M.A., *Guides*.<sup>9</sup> As the Office medical adviser properly utilized the A.M.A., *Guides* in reaching his conclusions, his report constitutes the weight of the medical evidence and establishes that appellant has no more than an 11 percent impairment of the left arm.<sup>10</sup>

The decisions of the Office of Workers' Compensation Programs dated May 6, 1999, November 24 and August 13, 1998 are hereby affirmed.

Dated, Washington, DC  
October 23, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member

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<sup>8</sup> *Id.* at 58, 322.

<sup>9</sup> As the Office medical adviser pointed out, Dr. Schwarten's bare figure of 15 percent crepitation is not supported by any calculation, which requires the use of two tables in the A.M.A., *Guides*, not just one.

<sup>10</sup> *Joseph Santaniello*, 42 ECAB 710 (1991).